

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

Baron BMW
db/a Baron Automotive Group

Respondent

)
) Docket No. CAA-07-2002-0148
)
)

) CONSENT AGREEMENT
) AND FINAL ORDER

PRELIMINARY STATEMENT

This proceeding for the assessment of civil penalties was initiated pursuant to Section 113(d) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7413(d), when Complainant issued to Respondent a Complaint and Notice of Opportunity for Hearing.

The Complaint served as notice that Complainant had reason to believe that Respondent had violated the Stratospheric Ozone Protection requirements at 40 C.F.R. Part 82, Subpart B and Respondent was therefore in violation of Section 609 of the CAA, 42 U.S.C. § 7671h and as notice of Complainant's intent to issue an order assessing penalties for such violations. A proposed civil penalty was set forth in the Complaint for such violations.

The parties subsequently entered into negotiations in an attempt to resolve the allegations of the Complaint; the Consent Agreement set forth below is the result of such negotiations with Respondent.

CONSENT AGREEMENT

1. For purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the factual allegations of the Complaint, including Counts II, V, VI, and VII.

2. Complaint hereby withdraws Counts I, III and IV.

3. Respondent hereby explicitly waives its right to contest the factual allegations and to appeal the Final Order accompanying this Consent Agreement.

4. For purposes of this proceeding only, Respondent consents to the issuance of the Order set forth below and consents to the payment of a civil penalty in the amount hereinafter recited.

5. Failure to timely pay any portion of the civil penalty assessed may result in commencement of a civil action in Federal District Court to recover the full amount due, costs, penalties, and accumulated interest at the rate of 6% per annum pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. 7413(d)(5).

6. No portion of any civil penalty, interest or penalties paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order may be claimed by Respondent as deductions for federal, state, or local income tax purposes.

7. Nothing contained in this Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

8. This Consent Agreement and Final Order shall resolve all violations of 40 C.F.R Part 82 arising from the transactions and occurrences alleged in the Complaint.

9. Each signatory to this Consent Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

FINAL ORDER

1. Respondent shall pay a mitigated civil penalty of Twenty-Three Thousand Dollars (\$23,000) within thirty (30) days of the effective date of this Order.

2. Payment shall be by cashier's or certified check, made payable to the United States Treasury, shall bear the docket number for this matter, and shall be mailed to:

EPA - Region VII
Regional Hearing Clerk
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

3. Each party shall bear its own costs and attorneys' fees in connection with this action.

In the Matter of
Baron BMW
d/b/a Baron Automotive Group
Docket No. CAA-07-2002-0148

COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: Henry F. Rompage
Henry F. Rompage
Office of Regional Counsel
EPA, Region VII

Date: 8-13-02

RESPONDENT:
Baron BMW
d/b/a Baron Automotive Group

By: Barbara J. Olsen
Title: President

Date: 7/29/02

IT IS SO ORDERED. This Order shall become effective immediately.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection
Agency--Region VII

IN THE MATTER OF Baron BMW d/b/a Baron Automotive Group, Inc., Respondent
Docket No. CAA-07-2002-0148

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Henry F. Rompage
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by First Class Mail Return Receipt:

Elizabeth Drill Nay
Thomas M. Martin
Lewis, Rice & Fingersh, L.C.
1010 Walnut, Suite 500
Kansas City, Missouri 64106


Copy by First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
401 M Street, S.W./Mail Code 1900L
Washington, D. C. 20460

and

The Honorable Carl C. Charneski
Administrative Law Judge
U. S. Environmental Protection Agency
401 M Street, S.W./Mail Code 1900L
Washington, D. C. 20460

Dated: 8/14/02


Kathy Robinson
Regional Hearing Clerk